



February 13, 2001

Mr. Christopher Cain
Attorney
VIA Metropolitan Transit
P.O. Box 12489
San Antonio, Texas 78212

OR2001-0537

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144120.

The VIA Metropolitan Transit ("VIA") received a written request for all records pertaining to "accidents" involving VIA buses and other vehicles. You inform us that VIA will release to the requestor all of its accident files for which no exception to disclosure is claimed. Additionally, you state that much of the remaining requested information will be made available to the requestor, including pleadings from litigation, letters to claimants, incident reports, and statistical records. You contend, however, that the remaining information, a representative sample of which you submitted to this office, is excepted from disclosure under section 552.103 of the Government Code.¹

We note at the outset that there is a dispute between VIA and the requestor as to whether you timely sought a decision from this office regarding this matter. Subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney

¹In reaching our conclusions here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

VIA received the initial records request on November 7, 2000. You state, however, that VIA believed the requestor had verbally modified his request at the time it was submitted to include only statistical data and that the requestor indicated that he would seek additional information at a later date once he had reviewed that data. VIA sought to confirm this understanding with the requestor in its letter dated November 13, 2000. You inform us that in a letter dated November 20, 2000 the requestor denied that he modified his request, stating that he had only intended to review the statistical information first before reviewing the other documents at issue. Consequently, it is the requestor's belief that you did not timely seek an open records decision from this office in your December 6, 2000 letter.

In Open Records Decision No. 663 (1999), this office concluded that the Public Information Act

contemplates a tolling of the ten days during the interval in which a governmental body and a requestor are communicating in good faith to clarify or narrow a request. This does not mean that the clarification or narrowing process results in an additional ten full days from the date the requestor responds to the request for clarity. While governmental bodies should be encouraged to seek clarification and narrowing of a request, they should also be encouraged to do so promptly, that is, as early as possible within the statutory ten-day deadline. Therefore, we conclude that the ten-day deadline is tolled during the process but resumes, upon receipt of the clarification or narrowing response, on the day that the clarification is received. This conclusion governs any future PIA requests requiring a governmental body to seek clarification or narrowing of a request.

ORD 663 at 5. Consequently, the ten day time period for requesting a decision from this office began on November 8, the day following VIA's receipt of the records request. The ten day deadline for requesting a decision from this office was tolled only during that time that VIA was awaiting a response to its November 13 clarification letter to the requestor. Because VIA received the requestor's response on November 20, the ten day period resumed on November 21, but expired on December 1. VIA did not submit its request for a decision to this office until December 6. Consequently, even allowing for two non-business days during the Thanksgiving holidays, we conclude that VIA did not timely request a decision from this office.

Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold unless there has been a previous determination that the requested information is excepted from required public disclosure. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Records Decision No. 150 (1977). Section 552.103 is not "other law" that makes information confidential. Because you raise section 552.103 here to protect only the interests of VIA, and not those of a third party, this exception does not provide a compelling reason for withholding information presumed to be public in this instance. Open Records Decision No. 542 (1990). Therefore, none of the responsive information may be withheld under section 552.103 of the Government Code.

On the other hand, section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Although the attorney general will not ordinarily raise an applicable exception the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise confidentiality provisions because the release of confidential information could impair the rights of third parties and the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352.

The records at issue contain confidential medical records that may be released only in accordance with the Texas Medical Practice Act (the "MPA"), title 3, subtitle B of the Occupations Code. *See* Open Records Decision No. 598 (1991). Section 159.002(b) of the MPA provides the following:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

The release of the "medical records" is governed by the MPA. Accordingly, VIA is authorized to release those records only as specified in chapter 159 of the Occupations Code.

Also among the documents at issue are "Peace Officer Accident Reports." The Seventy-fourth Legislature amended section 47 of article 6701d, V.T.C.S. to provide for release of

accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413. Further, the Seventy-fourth Legislature also repealed and codified article 6701d as section 550.065 of the Transportation Code without substantive change. *See* Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25, 1995 Tex. Gen. Laws 1025, 1870-71.² In section 13 of Senate Bill 1069, the Seventy-fifth Legislature amended section 550.065 of the Transportation Code to provide for release of accident reports under specific circumstances. Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582-83 (current version at Transp. Code § 550.065). The Seventy-fifth Legislature also repealed section 47 of article 6701d, V.T.C.S. in section 16 of Senate Bill 1069. *Id.* § 16(b), 1997 Tex. Gen. Laws 4575, 4583.

However, a Travis County district court has issued a permanent injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code enacted by section 13 of Senate Bill 1069. *Texas Daily Newspaper Ass'n v. Cornyn*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., April 26, 2000). The district court has declared that the law in effect prior to the passage of Senate Bill 1069 now governs and remains unaffected by the permanent injunction. We have determined that the law in effect prior to the passage of Senate Bill 1069 was section 47 of article 6701d, V.T.C.S.³

Section 47(b)(1) of article 6701d provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report is required to release a copy of the report on request to:

....

²Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment of section 47 of article 6701d, V.T.C.S. is preserved and given effect as part of the code provision. *See* Gov't Code § 311.031(c). In 1997, the Seventy-fifth Legislature enacted Senate Bill 898 and amended section 550.065 of the Transportation Code to conform to section 47 of article 6701d as enacted by the Seventy-fourth Legislature and repealed article 6701d. *See* Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 30.125, 1997 Tex. Gen. Laws 327, 648-49.

³ Although the Seventy-fifth Legislature enacted Senate Bill 898 prior to the passage of Senate Bill 1069, Senate Bill 898 was not effective until September 1, 1997. *See* Act of May 8, 1997, 75th Leg., R.S., ch. 165, § 33.01, 1997 Tex. Gen. Laws 327, 712. Further, Senate Bill 1069 expressly provides that to the extent of any conflict, Senate Bill 1069 prevails over another Act of the Seventy-fifth Legislature. *See* Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 16(c), 1997 Tex. Gen. Laws 4575, 4583. If irreconcilable amendments are enacted at the same session of the legislature, the latest in date prevails. Gov't Code § 311.025(b). Because Senate Bill 898 was never effective and later amendments prevail, we conclude that section 47 of article 6701d, V.T.C.S. was the law in effect prior to the passage of Senate Bill 1069 regarding the availability of accident report information rather than section 550.065 as amended by Senate Bill 898.

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident[.]

V.T.C.S. art. 6701d, § 47(b)(1). *See* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413.⁴ Under this provision, a law enforcement agency employing a peace officer who made an accident report “is required to release” a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* However, article 6701d provides the sole means by which individuals may obtain accident reports. Here, because VIA is not a law-enforcement agency for purposes of article 6701d, we conclude that VIA is required to withhold all “Peace Officer Accident Reports” pursuant to section 47 of article 6701d, V.T.C.S.

We also note that some of the documents at issue contain other information that must be withheld from the public. Section 552.117(1) of the Government Code requires that VIA withhold the home address, home telephone number, social security number, and family information of current or former VIA employees who request that this information be kept confidential under section 552.024 of the Government Code. Accordingly, VIA must redact this type of information contained in the documents to be released, but only if the respective employee has elected to keep this information confidential in accordance with section 552.024 of the Government Code prior to VIA’s receipt of the current records request. *See* Open Records Decision No. 530 (1989).

Some of the records to be released also contain individuals’ driver’s license numbers and license plate numbers. Section 552.130(a)(1) of the Government Code requires VIA to withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Accordingly, VIA must withhold all Texas driver’s license numbers pursuant to section 552.130(a)(1) of the Government Code. Also, section 552.130(a)(2) of the Government Code requires the withholding of information relating to “a motor vehicle title or registration issued by an agency of this state.” Consequently, VIA must withhold all license plate numbers contained in the records at issue pursuant to section 552.130(a)(2).

⁴We note that the text of amended section 47 of article 6701d is not found in Vernon’s Revised Civil Statutes or in the Transportation Code. However, section 47 of article 6701d is published in the 1995 General and Special Laws of the 1995 Legislature at chapter 894, section 1.

Finally, some of the records to be released also contain individuals' social security numbers. This office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code. However, this office has no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I). We therefore conclude that these numbers must be released.⁵

In summary, VIA must withhold all medical records in accordance with the MPA and all "Peace Officer Accident Reports" pursuant to V.T.C.S. article 6701d. VIA must also withhold employees' home addresses, home telephone numbers, social security numbers, and family information as discussed above, pursuant to section 552.117(1) of the Government Code and all Texas drivers' license numbers and license plate numbers pursuant to section 552.130 of the Government Code. However, because VIA did not timely request a decision from this office, none of the remaining information is excepted from public disclosure; the remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

⁵We caution VIA, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, VIA should ensure that these numbers were not obtained nor are maintained pursuant to any provision of law, enacted on or after October 1, 1990.

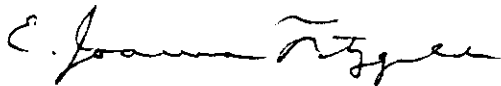
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/RWP/seg

Ref: ID# 144120

Encl. Submitted documents

cc: Mr. Brian Collister
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(w/o enclosures)